HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 474 of 2007

Between:

M/s. Balaji Granites, rep. by
the General Power of Attorney Holder,
K. Anil Kumar Reddy.

... Appellant

And

Government of India,
Rep. by Principal Chief Conservator of Forests(Central),
Ministry of Environment and Forests,
Bangalore & others.

... Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri S.Ramachandra Rao,
Senior Advocate assisted by
Shri K. Rajanna

Counsel for respondent No.1 : Shri A. Rajashekar Reddy

Counsel for respondent Nos. 2 to 6: Assistant Government Pleader
for Forests

Counsel for respondent Nos. 7 to 9 : Assistant Government Pleader
for Mines and Geology

Counsel for respondent No.11 : Shri D. Prakash Reddy,
Senior Advocate assisted by
Shri T.C. Krishna.

June 19, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 22.03.2007 passed by the learned Single Judge, whereby she dismissed the writ petition filed by the appellant for quashing the decision of the State Government to facilitate grant of approval in favour of respondent No.11 - M/s. Jayasree Granites under Section 2 of the Forest (Conservation) Act, 1980 (for short, 'the 1980 Act').

The Facts

A perusal of the record shows that on 07.08.2000, the appellant submitted an application for grant of lease for quarrying Black Granite over an extent of 3.750 hectares in Veerasettypalli Reserve Forest, Chittoor West Division. The same was rejected by the Joint Director of Mines and Geology on the ground of non-submission of approval in terms of the 1980 Act. Revision filed by the appellant under Rule 35-A of the Andhra Pradesh Minor Mineral Concession Rules, 1966 was allowed by the State Government vide its order dated 29.11.2001 and the Director of Mines and Geology was directed to process and decide the appellant's application afresh. Thereafter, Assistant Director of Mines and Geology, Chittoor forwarded the appellant's application to Divisional Forest Officer, Chittoor West Division for the purpose of grant of approval under the 1980 Act. The latter returned the application by observing that the same was defective. The appellant submitted revised proforma as per the procedure prescribed by the Government of India vide letter dated 21.07.2003 and also deposited the requisite processing charges. However, the concerned authority did not decide the application.

During the pendency of the revised application filed by the appellant, the Central Government framed the Forest (Conservation) Rules, 2003 (for short, 'the Rules'). Thereafter, the Assistant Director Mines and Geology, vide his letter dated 13.11.2003, asked the appellant to submit statutory forms as per the revised proforma. The appellant did the needful and also submitted copies of various documents including village map, survey sketch of CA land, corrected proposal map, original document of CA land, registered sale deed, letter of undertaking etc. All this is evinced from letters dated 13.12.2003, 20.12.2003, 10.01.2004 and 14.01.2004 sent by the representative of the appellant. For the sake of reference, these letters are reproduced below:

"Letter dated 13.12.2003

To
The Forest Range Officer,
Chittoor West Range,

Chittoor.

Sir,

Sub: Mines and Quarries – Quarry lease for Black Granite over an extent of 3.25 Ha in Veerasettipalli Reserve Forest of Chittoor West Range in favour of M/s. Balaji Granites – proposal –reg.

Ref: 1. Notice of your office Ref. No.1372/2003, dt.9.12.2003.
2.DFO C/W 3196/03/A2 dt.22.9.2003.

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As per the instructions vide notice from your office cited in reference No.1 above, I am herewith enclosing:

1. Demarcated survey sketch of proposal mining area and
2. Demarcated survey sketch of CA land approved by us – for facilitation of location and survey of the proposed mining area.

In this regard, I also bring to your kind notice that we have already submitted the above mentioned demarcated sketches to the Deputy Forest Officer, West Division, Chittoor long back.

Please do the needful. Thanking you Sir,

Yours sincerely,
Sd/-
M/s. Balaji Granites
Proprietor.

CC: Div. Forest Officer, West Division, Chittoor for favour of information."

"Letter dated 20.12.2003

To
The Divisional Forest Officer,
West Division,
Chittoor.

Sub: Reply & compliance of requirements in response to Urgent Memo from your office – Mining lease – our application for grant of mining lease in Veerasettipalli RF – reg.

Ref: 1. RC.No.3196/2003/A2 – Dated 12.12.2003.
2. DFO, Giddalur – RC. No.32192003/S3 – Dated 15.11.2003.

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As per the instructions vide the Urgent Memo (cited in reference No.1 above) from your esteemed office, I am obliged to submit the required documents in 8 sets, particulars of which are clearly described in the enclosures list below for enabling smooth conduct of survey by your Dept., in respect of our proposed mining area of an extent of 3.25 ha. in Veerasettipalli RF and the proposed CA land in Yadavalli Village of Kanigiri Mandal in Prakasam District. Please do the needful.

I also hereby bring to your kind notice that the name of the village of the proposed CA land is mis-spelt in our proposal and that is carried in your 'urgent

memo.' The name of the village is YADAVALLI not MADAPALLI. I regret the inconvenience caused and pray for the correction of mistake.

Thanking you Sir,

Yours sincerely,
Sd/-
Proprietor,
M/s.Balaji Granite

Enclosures: 1. Village Map
2. Survey sketch of CA land.
3. Corrected proposal map (with clear marking of exact location of the proposed mining area)
4. Original document of CA land
5. Regd. sale deed of the CA land
6. Letter of undertaking (NPV)."

"Letter dated 10-1-2004

To
The Forest Range Officer,
Chittoor West Range,
Chittoor.

Sir,

Sub: Our proposal for quarry lease for Black Granite – 3.25 Ha in Veerasettipalli Reserve Forest of Chittoor West Range – regarding.

Ref: Letter titled 'Final Notice': Ref.No.1223/2003, dt.31.12.2003 from your office.

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Through the letter cited in the above reference we understand that sketches of demarcated CA land and proposed mining area submitted by us are not with sufficient clarity for the Forest Range Officer, Chittoor West, Chittoor to conduct survey.

The 'final notice' dt.31.12.2003 allowing us only 3 days to respond was received by us only on 10th Jan. 2004.

Regarding the clarity of maps and sketches we regret the inconvenience caused to you. We have taken urgent measures to prepare the sketches of the CA land and proposed mining area taking professional help.

I beg your kind self to grant us 20 days time i.e. until 30th Jan.2004, for submission of the same, as we are to depend on outsiders' assistance in this regard.

Further, we also understand that the demarcated survey sketch of CA land that we enclosed along with letter dt.13.12.2003 was not received by your office. We will submit all the required documents at the earliest.

For the favour of your information we have erected pillars on the ground to demarcate the proposed mining site.

I pray your good self to grant us time until 30.01.2004 to submit the mining area sketch for facilitating your easy survey.

Thanking you Sir,

Yours sincerely,
Sd/-

For Balaji Granites.

Copy to District Forest Officer, Chitoor."

"Letter dated 14-1-2004

To
The Forest Range Officer,
Chittoor West Range,
Chittoor.

Sir,

Sub: Our proposal for quarry lease for Black Granite – 3.25 Ha in Veerasettipalli Reserve Forest of Chittoor West Range – regarding.

Ref: 1. Letter titled 'Final Notice': Ref.No.1223/2003, dt.31.12.2003 from your office.
2. Our reply to 'Final Notice' dt.10.01.2004.

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I beg your kind attention over our previous letter as cited on ref. 2 above.

I am herewith submitting the sketch of the proposed mining area (now revised to 2.95 Ha) surveyed and drawn by Sri N. Jyotheeswaran, Licensed Surveyor, Chittoor, as required by your good office. Please also take note that we have revised the extent of mining area to 2.95 Ha as against the originally proposed 3.25 Ha.

Further, I am also enclosing herewith the demarcated survey sketch of our CA land in response to your letter dt.13.12.2003.

I now bring this to your kind notice that we have already erected pillars on the ground demarcating the proposed mining site.

I, therefore, request your kind self to accept this sketch of the proposed mining area of extent of 2.95 Ha in the Compartment 218 of Veerasettipalli RF and the sketch of CA land being resubmitted herewith and do the needful.

Thanking you Sir,

Yours sincerely,
Sd/-
For Balaji Granites."

In the meanwhile, respondent No.11 and respondent No.10 - M/s. Hard Granite Industries, Chittoor also applied for grant of approval under Section 2 (ii) of the 1980 Act read with the Rules. After processing the applications, the authorities of the Forest Department recommended grant of approval in favour of respondent No.11. Vide Memo No.5546/Forest-I(1)/2004-2, dated 25.10.2004, the State Government accepted the recommendations and directed the Principal Chief Conservator of Forests, Andhra Pradesh to submit the necessary papers. The Principal Chief Conservator of Forests issued consequential proceedings on 06.11.2004.

Respondent No.10, whose application was rejected, filed Writ Petition No. 21489 of 2004 questioning the legality of communications dated 25.10.2004

and 06.11.2004. By an order dated 01.02.2006, the learned Single Judge quashed both the communications and directed the State Government to issue notice to the writ petitioner and respondent No.5 (respondent No.11 herein) and pass appropriate order after hearing them.

In compliance of the aforementioned order, the State Government re-considered the matter and passed order dated 04.05.2006 reiterating the grant of forest clearance in favour of respondent No.11. That order became subject matter of challenge in Writ Petition No.11167 of 2006 filed by respondent No.10 and Writ Petition No.26079 of 2005 filed by the appellant. During the pendency of those petitions, the appellant filed W.P.M.P.No.16999 of 2006 for its impleadment as party to the writ petition of respondent No.10. The same was allowed by the learned Single Judge on 24.10.2006.

After hearing the parties, the learned Single Judge passed two separate orders on 22.03.2006 and dismissed both the writ petitions. Writ Appeal No.315 of 2007 filed by respondent No.10 was dismissed by the Division Bench on 19.04.2007 with an observation that M/s. Hard Granite Industries, Chittoor did not have any subsisting application for grant of lease. The relevant extracts of the judgment of the Division Bench are reproduced below:

> "We have considered the submissions of the learned counsel, but have not felt impressed. Undisputedly, the lease granted to the appellant in 1997 was cancelled by the Director vide his order dated 19-3-2000 and that order has become final because the appellant did not challenge the judgment of the Division Bench in Writ Appeal No.1489 of 2002. The file relating to application dated 2-5-1998 made by the appellant for grant of clearance under the 1980 Act was also closed by respondent No.4 vide proceedings dated 15-11-2000. Those proceedings have also become final because the appellant did not question the same by availing appropriate departmental or legal remedy. It is, thus, evident that as on the date of making fresh application i.e.
>
> 10-12-2003 for grant of clearance under the 1980 Act, the appellant did not have subsisting mining lease. Therefore, the application made by the appellant for grant of permission/clearance to use the forest land for non-forest purpose was redundant and no illegality can be said to have been committed by the concerned authority by refusing to entertain the same. In our opinion, the concerned authority was not even required to process the application, what to say of entertaining and accepting the same because, in the absence of subsisting mining lease, the clearance granted by the competent authority would have been futile. The appellant cannot, without there being a subsisting lease in its favour, operate a mine only on the basis of clearance granted by the competent authority under the 2003 Rules read with Section 2 of the

1980 Act.

In view of the above conclusion, we do not consider it necessary to dilate on the issue whether the application made by the appellant was prior in point of time and the decision of the government to give preference to the application of respondent No.5 is legally unsustainable."

Insofar as the appellant's writ petition is concerned, the learned Single Judge dismissed the same only on the ground that it failed to comply with the instructions issued by the officials of the Forest Department and did not take steps for survey and demarcation of the land.

We have heard Shri S. Ramachandra Rao, learned Senior Counsel appearing for the appellant, learned Government Pleaders for Forests and Mines and Geology, Shri D. Prakash Reddy, Senior Counsel appearing for respondent No.11, Shri A. Rajashekar Reddy, learned Assistant Solicitor General and perused the record.

In our opinion, the order under challenge is liable to be set aside because while declining relief to the appellant, the learned Single Judge omitted to consider the documents produced by the appellant. A reading of the four letters reproduced above shows that in response to communications dated 09.12.2003 and 31.12.2003 received from the concerned officers, the appellant submitted various documents regarding survey and demarcation of the land in the reserved forest which was to be utilised for grant of lease for quarrying Black Granite. The learned Single Judge did not advert to any of these documents and dismissed the writ petition by observing that the writ petitioner has failed to comply with the directions given by the authorities of the Forest Department. She also omitted to consider letter dated 14.01.2004 sent by the appellant to Forest Range Officer enclosing therewith the survey report prepared by Licensed Surveyor, Chittoor.

If the learned Single Judge had considered the documents produced by the appellant and then concluded that the decision of the respondents to grant forest clearance to respondent No.11 was legally correct, the Division Bench may not have interfered. However, the fact of the matter is that the learned Single Judge did not consider any of the documents produced by the appellant and dismissed the writ petition by assuming that it had failed to comply with the instructions issued by the officials of the Forest Department and did not take steps for survey and demarcation of the land. We are sure, if the learned Single Judge had adverted to letters dated 13.12.2003, 20.12.2003 and 14.01.2004,

then she would not have dismissed the writ petition by assuming that the appellant failed to comply with the instructions issued by the officials of the Forest Department and did not take steps for survey and demarcation of the land applied for.

For the reasons stated above, the appeal is allowed and the order of the learned Single Judge is set aside. The writ petition may now be listed for fresh adjudication before the Bench hearing such matters.

As a sequel to disposal of the writ appeal, W.A.M.P.Nos.898 and 899 of 2007 filed by the appellant for interim relief are disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

19.06.2007

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